PREPARED REMARKS FOR PRESENTATION TO THE HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON WELLNESS AND HUMAN RIGHTS
OCTOBER 1, 2003
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Chairman Burton, members of the committee, thank you for the invitation to speak with you about a topic that is important to me and to all Americans.

We can all agree that there is a significant problem with increasing rates for medical-malpractice insurance. My home state of Pennsylvania is one of the hardest hit. Just this past summer, the General Accounting Office reported that cash payments by insurers to medical-malpractice plaintiffs in Pennsylvania jumped more than 70 per cent between 1998 and 2002.

Doctors in Pennsylvania pay malpractice-insurance premiums that are sharply higher than the national average. A number of major insurance carriers have failed and others have opted out of insuring doctors or have refused to issue new policies. The Pennsylvania Department of Insurance reported just this past summer that 2002 marked the fourth consecutive year in which insurers lost money on medical-malpractice insurance policies issued in Pennsylvania. As a result, one professional organization estimates that Pennsylvania – home to the first medical school in the original 13 colonies and now home to some of the finest medical schools and hospitals in the nation – has lost nearly 1,000 doctors who have decided that practice there just doesn't pay.

The problem is not Pennsylvania's alone. Just last year, the trauma center at the University of Nevada Medical Center in Las Vegas had to close for 10 days because its surgeons quit in the face of huge increases in their malpractice premiums. Such stories

are legion, and they arise all across the country. The flight of doctors from the profession or from high-exposure specialties or geographic areas threatens Americans' continuing access to quality health care. Women without doctors to deliver babies. Accident or crime victims turned away from trauma centers. These are the realities of a worsening national crisis.

Few could question the diagnosis. The debate grows heated, however, when we try to settle on a cure. Many of us, including President Bush, believe that one important step must be a comprehensive, nationwide reform of medical-malpractice law. There are too many meritless malpractice suits filed, and there are too many over-generous jury awards. Faced with that uncertain and potentially unlimited exposure, insurance companies feel compelled to protect themselves and raise their rates.

Meaningful reform should include caps on awards for non-economic damages, that ethereal category of damages that includes such intangibles as pain and suffering. It should include limits on the fees lawyers can recover, and it should raise the burden of proof for recovery of punitive damages. The thrust of each of these measures would be to strike a balance between the legitimate need to provide redress to injured patients and the insurance industry's need for greater certainty about its potential exposure. House Bill 5, sponsored by Pennsylvania's Jim Greenwood and passed by the House more than six months ago, included each of these provisions and more. Unfortunately, that legislation, like other similar measures in years past, was unable to make appreciable headway in the Senate.

While we cannot be assured these reform measures will alleviate the crisis, there is sound, empirical evidence to give us hope. California, for example, enacted a

comprehensive reform plan nearly 30 years ago. Since then, insurance premiums there have risen at less than half the average national rate. Other states that have enacted substantive reform report similar success.

Opponents of these sorts of reforms will tell you that there are other causes for skyrocketing malpractice premiums such as poor investment decisions by the insurance companies. That explanation ignores the significant differences in rates between states that have enacted real reforms and those that have not. If the problem were poor investments, we would expect to see similar rate increases across the board without regard for geography. In addition, that Pennsylvania Department of Insurance study I mentioned a moment ago made a helpful distinction. It explained that, in the decade between 1992 and 2002, Pennsylvania med-mal claims payments almost tripled, premiums more than doubled, but investment income for insurers declined by only a third. The Pennsylvania study noted that, in 2002, med-mal insurers in Pennsylvania earned more than $46 million on their investments. However, because of malpractice claims, which comprised more than 61 per cent of all insurer costs in Pennsylvania, those insurers still ended the year at an $18-million loss. Considering that data and similar information from six other states, the GAO concluded in July of this year that "Losses on medical malpractice claims appear to be the primary driver of increased premium rates in the long term."

Even if the poor-investment argument were to some degree correct, it would still miss the point. Study after study tells us that malpractice litigation is, at the least, a substantial contributor to the insurance crisis. Reform opponents seem to believe that a problem can have only one cause and, correspondingly, one solution. Of course, that's

not so. If litigation reform could slow the pace of insurance-rate increases, it would be well worth it. The trial lawyers point the finger at the insurance industry at least in part because meaningful tort reform might well hit those lawyers in the pocketbook.

There is then the issue of whether the reform should be at the national or the local level. As a former governor, I have great faith in state governments and their ability to react to the needs of their citizens. Several states, Pennsylvania among them, have enacted reforms. With rare exception, those laws are too often the cobbled-together results of political battles between doctors' groups and trial lawyers. As a result, they often reach the statute books so diluted as to be nearly useless.

The medical-malpractice problem is national in scope and effect. Many doctors have interstate practices. Many insurers provide coverage in more than one state. The federal government – through direct coverage of members of the military, veterans and others and through Medicare, Medicaid and community-health initiatives – is a major consumer of health care. The crisis affects our national economy through jobs lost when hospitals, clinics or medical offices close and through lost productivity caused by workers receiving inadequate health care. A national problem requires a national solution.

I recognize that the same political pressures that have so watered down reform efforts in many states may well prove to be an insurmountable impediment to the Senate's following this body's lead in passing a federal reform bill. But something must be done, and it must be done nationally, comprehensively and soon.